

### **REMARKS**

This is in response to the Office Action mailed on June 23, 2008.

Claims 5, 8, 32, and 35 are amended. As a result, claims 1-9, 12-18, 27, 28, 32, and 35 are now pending in this application.

#### **Allowable Subject Matter**

Applicant notes that Claim 18 was allowed.

#### **Claim Objections**

Claim 8 was objected to because of informalities and has been amended.

#### **§ 112 Rejection of the Claims**

Claims 1-9, 12-17, 27, 28, 32 and 35 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant believes that the claims as amended are definite and in condition for allowance.

The Office Action stated that it was unclear in Claim 1 whether orders or activities are being scheduled, since lines 1-2 state the claim is directed to scheduling orders while lines 8-9 refer to scheduling activities. Applicant respectfully disagrees regarding the indefiniteness of Claim 1. Claim 1 is directed toward a “method of scheduling orders,” but includes “scheduling the activities and smaller activities.” Given that the method includes “scheduling the activities,” Applicant does not believe that “a schedule for the activities,” recited later in the claim, could be considered indefinite.

Claim 12 was rejected under a similar line of reasoning with regards to whether tasks or activities are scheduled. Applicant submits that Claim 12 is definite. Claim 12 discloses a “method of scheduling tasks.” One element of that method comprises “scheduling the activities and smaller activities.” Thus, activities are scheduled as a part of scheduling tasks. The reference in line 6 of Claim 12 to “the scheduling of activities” would therefore be understood as

referring to “scheduling the activities and smaller activities,” which is part of the claimed method of scheduling tasks.

The Office Action further stated that it was uncertain in Claim 1 at line 7 whether the “wherein” clause is a positive limitation. Applicant asserts that the Examiner’s assumption, that the “wherein” clause of Claim 1 is a positive limitation, is correct. While “wherein” clauses are listed in the MPEP as examples of claim language that may raise a question as to the limiting effect of language in a claim, the use of “wherein” in Claim 1 is not believed to be unclear. The questions raised is whether such a clause simply expresses the intended result of a process step positively recited, or whether it is material to patentability. Applicant respectfully submits that the “wherein” clause of Claim 1 is clearly not a recitation of the intended result of a process step. Therefore, Claim 1 is not believed to be indefinite in this respect. The Office Action also noted that Claims 2-4, 14, and other claims (presumably, Claims 6-9, 27, 28, 32, and 35) have a similar problem. Applicant has reviewed the “wherein” clauses of these claims and believes them to be definite for substantially the same reason as described above with respect to Claim 1.

Claim 35 was rejected because it was unclear as to what the tasks are. Applicant has amended Claim 35, along with Claims 5 and 8 to address this rejection.

Applicant believes that the arguments and amendments presented above are sufficient to overcome the rejections of Claims 1-9, 12-17, 27, 28, 32 and 35. Applicant therefore believes that these claims are in condition for allowance.

#### §101 Rejection of the Claims

Claim 32 was rejected under 35 USC § 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the Office Action states that the structure claimed “is by itself incapable of generating a tangible, useful, and concrete result to render the claim statutory subject matter.” Applicant has amended Claim 32 to include that it is “A memory for access by an application program for scheduling tasks being executed on a computing system.” Applicant submits the system of Claim 32 is capable of generating a tangible, useful, and concrete result. For example, Claim 32 is capable of generating a task schedule, certain embodiments of which are described in the specification. Claim 32 is believed to be in condition for allowance.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 359-3269 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

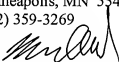
Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 359-3269

Date

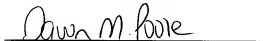
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By



Michael R. Overland  
Reg. No. 59,151

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 23rd day of September, 2008.



Name



Signature